

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF
2 MRS. ROBERT D. ISAAK,

Appellant,

3 EDITH BAKER,

4 Appellant in Intervention,

5 vs.

6 STATE OF WASHINGTON,
7 SNOHOMISH COUNTY,

8 Respondent,

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY and
11 SLADE GORTON, ATTORNEY GENERAL,

Intervenors.

SHB No. 19

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

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13 THIS MATTER being a request for review of a denial of a substantial
14 development permit under RCW 90.58.140; having come on regularly for
15 hearing before the Shorelines Hearings Board on the 30th day of July,
16 1973, at Everett, Washington; and appellant Mrs. Robert D. Isaak appearing
17 pro se; appellant-intervenor Edith Baker appearing through her attorney,
18 Efrem Agranoff; respondent Snohomish County appearing through its deputy

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1 prosecuting attorney, Darrell Syferd and respondent-intervenors
2 Department of Ecology and Attorney General appearing through their
3 attorney, Robert V. Jensen; and Board members present at the hearing
4 being James T. Sheehy and Arden A. Olson, designee for this matter of
5 Bert L. Cole, with Thomas Carr, assistant attorney general, acting as
6 hearing examiner by stipulation of all parties; and the Board having
7 considered the sworn testimony, exhibits, briefs, transcript, records
8 and files herein and having entered on the 15th day of January, 1974,
9 its proposed Findings of Fact, Conclusions of Law and Order, and the
10 Board having served said proposed Findings, Conclusions and Order upon
11 all parties herein by certified mail, return receipt requested and
12 twenty days having elapsed from said service; and

13 The Board having received no exceptions to said proposed Findings
14 of Fact, Conclusions and Order within the time prescribed for same; and
15 the Board being fully advised in the premises; now therefore,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
17 Findings of Fact, Conclusions of Law and Order, dated the 15th day of
18 January, 1974, and incorporated by this reference herein and attached
19 hereto as Exhibit A, are adopted and hereby entered as the Board's
20 Final Findings of Fact, Conclusions of Law and Order herein.

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND
ORDER

1 DONE at Lacey, Washington this 14th day of March, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 Robert F. Hintz
6 ROBERT F. HINTZ, Member

7 Arden A. Olson
8 ARDEN A. OLSON, Member

9 Tracy J. Owen
10 TRACY J. OWEN, Member

11 Mary Ellen McCaffree
12 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND
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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MRS. ROBERT D. ISAAK,

Appellant,

EDITH BAKER,

Appellant in Intervention,

vs.

STATE OF WASHINGTON,
SNOHOMISH COUNTY,

Respondent,

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Intervenors.

SHB No. 19

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the request for review of a denial of a substantial development permit under RCW 90.58.140, came before the Shorelines Hearings Board (James T. Sheehy and Arden Olson, designee for this matter of Bert L. Cole, with Thomas Carr, assistant attorney general,

Exhibit A

1 acting as hearing examiner by stipulation of all parties) at a hearing
2 in the City Hall, Everett, on July 30, 1973.

3 Appellant Isaak appeared pro se; appellant-intervenor Baker
4 appeared through Efrem Agranoff; respondent Snohomish County appeared
5 through Darrell Syferd, deputy prosecuting attorney; respondent-
6 intervenors State of Washington appeared through Robert V. Jensen,
7 assistant attorney general. Doris J. Stults, Bothell court reporter,
8 recorded the proceedings.

9 Witnesses were sworn and testified. Exhibits were admitted.
10 Counsel filed post-hearing briefs.

11 From testimony heard, exhibits examined, briefs considered and
12 transcript reviewed, the Shorelines Hearings Board produces these

3 FINDINGS OF FACT

14 I.

15 Appellant Isaak is the owner of Lot 11 in Division D of a plat
16 of Hat Island, Snohomish County. She purchased the lot in June, 1968.

17 II.

18 The plat for Division D was recorded with Snohomish County on
19 September 17, 1962. It does not show bulkhead lines.

20 III.

21 Hat Island (known as Gedney Island on federal marine charts),
22 about two miles long and one-half mile wide, lies at the western limit
23 of Port Gardner Bay some five miles west of Everett. The island is an
24 undulating plateau with an average elevation of 230 feet above sea
25 level; most of its sides, including the area in this matter, have
26 nearly vertical cliffs. There are only two known year-around residences

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 and about sixty summer cottages. The island remains largely in its
2 natural condition. About 250 lots are located on the perimeter of the
3 island.

4 IV.

5 On April 17, 1972, Snohomish County denied to appellant-intervenor
6 Baker, representing the Home Owners Group (owners of Lots 3-17, Division
7 D, Hat Island, including appellant Isaak), a substantial development
8 permit under RCW 90.58.140 to provide a uniform 1,050 foot bulkhead and
9 fill of second class tidelands of Puget Sound for the purpose of
10 building homesites.

11 V.

12 Appellant filed a timely request for review of the permit denial
13 with this Board.

14 VI.

15 The lots in Division D are comprised of a 125-foot bluff and
16 tidelands. They are unbuildable without bulkheading and backfilling.

17 VII.

18 Erosion of the bluff above the instant properties is not caused by
19 wave undercutting. Construction of a bulkhead would not stop the bluff
20 erosion.

21 VIII.

22 No work had been begun on the proposed substantial development
23 by July 30, 1973, but two of the lots in Division D had been bulk-
24 headed and filled prior to the effective June 1, 1971 date of
25 RCW 90.58.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 From these Findings, the Shorelines Hearings Board comes to these

2 CONCLUSIONS

3 I.

4 Appellants' proposed fill and bulkhead is a substantial development
5 which is inconsistent with the policy section of the Shoreline
6 Management Act (RCW 90.58) and the Final Guidelines of the Department
7 of Ecology, particularly as to Bulkheads (WAC 173-16-060(11)(e) and
8 Landfill (WAC 173-16-060(14)(c)).

9 II.

10 The proposed substantial development falls within the exemption
11 provided under RCW 90.58.140(9)(a) for developments included within a
12 preliminary or final plat approved after April 13, 1961 and prior to
13 April 1, 1971.

14 From these Conclusions, the Shorelines Hearings Board issues this

15 ORDER

16 1. The request for review is denied and Snohomish County's denial
17 of the substantial development permit is sustained for the reason that
18 the development is inconsistent with RCW 90.58 and WAC 173-16-060(11)(e)
19 and (14)(c).

20 2. Appellant-intervenor Baker need not obtain a permit under
21 RCW 90.58 to construct the improvement described in her permit
22 application.

1 DONE at Lacey, Washington this 15th day of January, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 Robert F. Hintz
6 ROBERT F. HINTZ, Member

7 Mary Ellen McCaffree
8 MARY ELLEN McCAFFREE, Member

9 Arden A. Olson
10 ARDEN A. OLSON, Member

11 Tracy J. Owen
12 TRACY J. OWEN, Member

13 (W. A. Gissberg, having disqualified himself, did not participate
14 in the hearing or decision.)

15 (James T. Sheehy resigned from the Board and was succeeded by
16 Mary Ellen McCaffree after the hearing and prior to the decision.)

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER